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Sen. Vi Simpson
Sen. Glenn Howard
Rep. Mark Kruzan
Rep. Richard Mangus
Rep. Dale Sturtz
Rep. David Wolkins
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Alice Schloss
Lynn Waters



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Authority: P.L. 248-1996 (SEA 138)

MEETING MINUTES¹

Meeting Date: November 23, 1999
Meeting Time: 10:00 A.M.
Meeting Place: Governmental Center North, 100 N. Senate Ave.,
Conference Room B
Meeting City: Indianapolis, Indiana
Meeting Number: 5

Members Present: Sen. Beverly Gard, Chairperson; Sen. Kent Adams; Sen. Vi Simpson; Rep. David Wolkins; David Benshoof; Randy Edgemon; Marvin Gobles; William Goffinet; Lori Kaplan; Regina Mahoney; Gary Redding; Arthur Smith, Jr.; The Honorable Jim Trobaugh.

Members Absent: Sen. Glenn Howard; Rep. Mark Kruzan; Rep. Richard Mangus; Rep. Dale Sturtz; Michael Carnahan; Hon. Jack Fowler; Max Goodwin; Kerry Michael Manders; David Rector; Alice Schloss; Lynn Waters.

The Chairperson, Senator Gard, called the meeting to order shortly after 10:00 a.m. and called upon Department of Environmental Management (IDEM) **Commissioner Lori Kaplan**, who presented her monthly report to the Environmental Quality Service Council (EQSC). Referring to a packet of printed

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

materials², Commissioner Kaplan discussed IDEM's outreach, education, and assistance activities for the month of October and other aspects of recent IDEM activity. She pointed out that October was another month during which IDEM issued no late permits. Consequently, it has been more than one year since IDEM has issued a late permit.

David Parry and **Jeff Zickgraf** of IDEM then made a presentation on IDEM's new Internet-based Permit Guide, which is intended to provide permit applicants and the general public with information on environmental permits.³

In response to a question from Senator Gard, Mr. Parry said that the Internet-based Permit Guide was created "in house" and not by outside contractors.

Senator Gard then called for the presentation of the reports from the four subcommittees.

Senator Simpson, the Chairperson of **the IDEM and Public Health Subcommittee**, presented a document setting forth the recommendations of her Subcommittee.⁴ She discussed her Subcommittee's four recommendations one-by-one.

RECOMMENDATION #1 TO THE EQSC: ESTABLISH A PILOT DATABASE PROGRAM

The IDEM and Public Health Subcommittee recommends to the EQSC the establishment of a Pilot Database Program. The Program should be established by the ISDOH through the following steps:

A. Select a limited number of geographic locations within Indiana as the subject of the Pilot Database. Choose locations that:

- have diverse populations representing a broad spectrum of Indiana residents; and
- have local health departments of adequate size and resources to assist in the Pilot Program.

Marion County and Lake County are specifically identified as appropriate geographic locations. IDEM and ISDOH should select other appropriate geographic locations.

B. Assemble existing health information for the subject geographic locations and load them into the Pilot Database. The following types of existing health information should be considered:

- Cancer Registry: Physicians are already required to report the information to ISDOH but the reporting is not kept up to date, especially in the counties bordering other states, where services may be provided in another state. ISDOH will need to push reporting more significantly.
- Mortality Information: Death certificates include a significant amount of information that will be helpful. ISDOH already receives this information and periodically publishes it.
- Lead Screening Information: ISDOH already gathers and processes this information.
- Medicaid Information: Through Hoosier Healthwise, information gathered from reimbursement claims can provide an excellent foundation, especially for communities that may be at significant risk from environmental threats. More children will receive coverage through the Children's Health Insurance Program, thus improving the scope of the information.

²A copy of the packet of materials presented to the EQSC by Commissioner Kaplan, labeled as ATTACHMENT A to these minutes, is available from the Legislative Information Center (LIC) for reading and copying.

³Mr. Parry and Mr. Zickgraf distributed a page of information on the IDEM Internet-based Permit Guide. A copy of this page is included in the packet of materials from Commissioner Kaplan that is available from the LIC as ATTACHMENT A to these minutes.

⁴A copy of the "Recommendations of the IDEM and Public Health Subcommittee" is available from the LIC as Attachment B to these minutes.

- State Health Plans: The State of Indiana has the authority to request health information from the various health plans that it provides to state employees. This information would provide a good cross-section of Indiana population (while admittedly biased toward Indianapolis) that would complement the Medicaid data.
- Hospital Discharge Data: The Indiana Hospital Association collects information on hospital discharges and outpatient treatment from hospitals throughout Indiana. The association submits this information to ISDOH.
- Census Data: The census program collects information from citizens regarding their health. This information could provide an excellent backdrop for comparison.

C. In designing the Pilot Database, focus on:

- children as the population segment of special interest; and
- diseases affecting children -- such as asthma, cancer, and elevated blood lead levels -- that are thought to be linked to environmental contamination.

D. Analyze the Information in the Pilot Database to:

- recognize environmental insults affecting public health in Indiana;
- identify statewide disease trends that exceed national averages;
- identify local disease trends within the subject areas that exceed statewide averages; and
- identify gaps in the information provided currently by the other Indiana health information databases.

Two years should be allowed for the creation Pilot Database Project. At the end of two years, the ISDOH should report on the status and results of the Project.

Senator Simpson explained this recommendation, discussing the thinking that led to the points in the recommendation. She then explained her Subcommittee's second recommendation:

RECOMMENDATION #2 TO THE EQSC: IMPROVE INDIANA'S EXISTING HEALTH INFORMATION DATABASES

The IDEM and Public Health Subcommittee recommends to the EQSC that the following steps be taken to improve health information databases in Indiana:

A. Expand the Indiana Cancer Registry. Rebuild the Cancer Registry by funding it with state funds in the amount of \$2 million per year for two years and then maintain it with state funding of \$1 million per year. This state funding would supplement federal funds. Use the advice of the Centers for Disease Control about the appropriate staffing and priorities in order to make the Cancer Registry into the equivalent of its counterparts in states of similar size. Ensure that the staff includes people to manage data, analyze data, assist in the field with the quality of reported data, assist users, and prepare reports for public health professionals. At the end of two years, the ISDOH should report to the EQSC on the status of the Cancer Registry.

B. Expand the Indiana Birth Record Malformation Report. Require the reporting of malformations identified at ages up to four years old. This would require a change in state law to mandate that health professionals report defects discovered in the early years. It would also require an increase in state funding and additional staff, which should be provided permanently.

C. Create a statutory standing commission to coordinate interagency strategies for addressing disease clusters. This commission would deal with the coordination of information exchange between IDEM and ISDOH. It would also remedy a current problem with the effectiveness of the ISDH/County Health Department system in dealing with diseases *other than* the highly communicable and infectious diseases. The commission would encourage research into excluding and implicating potential causes and effects of important diseases.

D. Create a State GIS Coordinating Committee. This Committee should be created by the General Assembly to better coordinate the many state data databases that could be compared on single GIS displays.

In explaining this recommendation, Senator Simpson said that the Subcommittee had learned that there are "holes" in Indiana's current health information repositories. The proposed expansion of the Cancer

Registry and the requirement that malformations be reported upon discovery up to the age of four, she said, are intended to fill these holes. Senator Simpson acknowledged that there is already a state GIS coordinating committee but said that the Subcommittee envisions a new coordinating committee that would perform a function not currently being performed.

She then discussed the third recommendation:

RECOMMENDATION #3 TO THE EQSC: REPLACING FAILING SEPTIC SYSTEMS WITH CONNECTIONS TO CITY SEWER SYSTEMS

The IDEM and Public Health Subcommittee recommends to the EQSC the passage of legislation to do the following:

- (1) If necessary, amend IC 13-18-13-3 to authorize the use of money from the Wastewater Revolving Loan Program to pay for the extension of sewer systems to replace failing septic systems.
- (2) "Supplement" the current revolving loan fund to provide funds to pay for extension of sewer systems to replace failing septic systems.

Senator Simpson said that the subject of this recommendation -- failing septic systems -- deserves more time and attention than the IDEM and Public Health Subcommittee could give it in 1999.

RECOMMENDATION #4 TO THE EQSC: STRENGTHEN THE LAW PROHIBITING THE SALE OF TOBACCO TO MINORS.

The IDEM and Public Health Subcommittee recommends to the EQSC the following:

- (1) Encourage enhanced enforcement of the law prohibiting the sale of tobacco to minors.
- (2) Enact a bill amending IC 31-37-2 to provide that a person who provides cigarettes to a minor commits the offense of contributing to delinquency under IC 35-46-1-8.

This recommendation, Senator Simpson said, was included in the Subcommittee's report at the urging of one member of the Subcommittee following a short discussion.

Senator Gard invited comments on these recommendations from other members of the EQSC. In regard to Recommendation #3, Mayor Goffinet said that it would be a hardship for many cities to extend sewer service out to the many failing septic systems in their areas and that cities would not want such a requirement to become an unfunded mandate.

Senator Simpson responded that there are many potential approaches to solving the problem of failing septic systems and that it is an important issue that deserves more time.

Arthur Smith inquired whether the Subcommittee had discussed alternatives to hooking up to a sewer system, such as constructing wetlands. Senator Simpson replied that the Subcommittee did not have time to consider these alternatives but she is interested in them and they deserve to be explored. Senator Gard commented that there is work to be done with respect to these alternatives and that the EQSC will probably revisit this subject later.

Tom Neltner expressed support for the IDEM and Public Health Subcommittee's recommendations and thanked Senator Simpson and the Subcommittee members for their hard work.

David Benshoof stressed the importance of ensuring that data going into databases is good. He suggested that there may be additional tests that physicians should be required to perform on infants,

such as a blood lead test.

Glenn Pratt commented that he recently attended a soil and water conservation meeting and heard that even the agricultural community feels that the state needs to act more aggressively on septic system problems.

Rae Schnapp suggested that the EQSC should consider making proper maintenance of septic systems mandatory by law.

Senator Simpson made a motion that the EQSC should, in the year 2000, study the effects of failing septic systems on public health, perhaps through a subcommittee. This motion was adopted by consent. A motion to accept the entire IDEM and Public Health Subcommittee Report was also adopted by consent.

Next, Senator Kent Adams, the Chairman of **the Air Subcommittee**, presented the Report of the Air Subcommittee to the EQSC.⁵ This report, he explained, sets forth several recommendations with respect to each of the four issues assigned to the Air Subcommittee for study:

- (1) A potential air emissions reduction credit program. [HEA 1561]
- (2) Air emissions of styrene. [HEA 1919]
- (3) Ground level ozone formation. [HR 110, HR 80]
- (4) Alternative fuels and alternative fuel vehicles. [HCR 115]

Senator Adams explained that he, as Chairman, invited the members of the Subcommittee to submit written recommendations as to the Subcommittee's issues; that staff compiled the members' recommendations; that the compilation was discussed at the Subcommittee meeting of September 29; and that the members' recommendations comprise the Subcommittee's Report.

Senator Adams emphasized this point: Because the Air Subcommittee did not vote on whether to endorse any of the recommendations in the Report, the inclusion of a recommendation in the Report should not be interpreted as a sign that the Subcommittee -- or a majority of the Subcommittee's members -- endorses the recommendation. The Report is simply a compilation of recommendations submitted to the Subcommittee.

Senator Adams read through the report, highlighting the points of major significance. A motion was then made to take action on the Report. On a point of clarification, Senator Gard said that the EQSC, in acting on the motion, was voting only on accepting the Subcommittee Report, and not voting on endorsing any of the various recommendations contained in the Report. The motion to accept the report was adopted by consent.

Senator Gard, as Chairperson of **the Land and Water Subcommittee**, then presented the Report of the Land and Water Subcommittee.⁶ She explained that her Subcommittee, in preparing its Report to the parent body, received several proposed recommendations pertaining to the issues studied by the Subcommittee:

⁵A copy of the Report of the Air Subcommittee is available from the LIC as Attachment C to these minutes.

⁶A copy of the Report of the Land and Water Subcommittee is available from the LIC as Attachment D to these minutes.

- (1) Study whether IDEM should allow a transition period associated with the RISC guidance document.[HEA 1919]
- (2) Review the Hazardous Waste Manifest Program. [HEA 1578]
- (3) Continue to look at related water issues. [SB 343]

Senator Gard explained the following: The Land and Water Subcommittee voted to endorse some of the recommendations it received. However, the Subcommittee did not reject any of the proposed recommendations it received, and Senator Gard wanted all of the recommendations submitted to be incorporated into the Subcommittee's report. Therefore, the Subcommittee's Report sets forth some recommendations that were endorsed by the Subcommittee and others that were not.

With respect to the first of the Subcommittee's issues, the transition period applying to the RISC guidance document, Senator Gard announced that the Subcommittee had voted to endorse the following recommendations, which were submitted by Miriam Dant:

Length of Transition Period. We recommend a longer transition period than the six-month period that is proposed. We suggest that a one-year or two-year transition period should be used, as such a period would provide for these contingencies more adequately than a six-month period.

Consistent environmental standards should apply throughout an environmental project. IDEM's policy should clearly state that if "existing" guidance is chosen during the transition period, "existing" guidance will apply to that project during and after the transition period, and until the end of the project.

Eligibility for "existing" guidance option. The option to choose "existing" guidance rather than RISC guidance during the transition period should be available if a party has:

- (1) begun a project (including preparing a proposal for environmental investigation and/or remediation); and
- (2) relied on "existing" guidance in doing so, to the point that applying new standards to the project would be unfair.

Senator Gard informed the EQSC that the subgroup headed by Ginny Mahoney that has been considering RISC-related issues is compiling a report concerning potential changes in Indiana's laws concerning voluntary cleanups of contaminated properties. Ms. Mahoney said that her subgroup's report, which will be presented at the December 7 meeting of the EQSC, will discuss how other states address brownfields from a RISC standpoint and will attempt to identify provisions in other states' laws that might be considered as models for potential amendments of Indiana's statutes.

With respect to the hazardous waste manifest issue, Senator Gard asked Senator Simpson to explain the potential compromise that she worked out with IDEM and interested parties. Senator Simpson said that the group with whom she worked had proposed the elimination of the requirement that a copy of each hazardous waste manifest be sent to IDEM. Instead of being required to send a copy of each manifest to IDEM, a generator of hazardous waste would be required to file with IDEM an annual report that would have the same format as the biennial report required by federal law. Because this change would eliminate a source of funds for IDEM -- i.e., the fees that IDEM collects in connection with the transmission of manifests to IDEM -- a financial solution would be necessary.

Senator Gard interjected that the Land and Water Subcommittee had endorsed the idea of replacing the transmission of manifest copies to IDEM with a new annual report to IDEM. The financial solution to

the loss of revenue that would result for IDEM would be studied by the EQSC during the 2000 interim period, she said.

David Benshoff commented that small quantity generators (SQGs) of hazardous waste would not favor the elimination of the manifest requirement if SQGs would consequently fall under a requirement to prepare a new annual report to IDEM. This, he said, would increase the paperwork burden on SQGs by 100% because SQGs will still have to fill out manifests to ship their waste -- in addition, SQGs will have to prepare a report for IDEM that is not currently required. All that SQGs will have gained is the elimination of the requirement to send a copy of the manifest to IDEM.

In response to Mr. Benshoff's comments, Senator Gard proposed an alternative recommendation on the hazardous waste manifest issue:

The EQSC should recommend that the legislators who are working on the hazardous waste manifest issue should continue to work with interested parties and IDEM to come up with a solution that will:

- (1) satisfy the informational needs that are met by the current requirement; and**
- (2) address IDEM's funding needs as well.**

The motion to accept this alternative recommendation for the EQSC's 1999 final report was adopted by consent.

Senator Gard then reported the water-related recommendations that had been endorsed by the Land and Water Subcommittee. She began with the proposed recommendations submitted by Bill Beranek, Ph.D., which the Subcommittee had endorsed:

1. Regarding the designation of Outstanding State Resource Waters (OSRW):

The Subcommittee supports the general direction of the Water Quality Advisory Group to develop a resolution of this OSRW dilemma and, because this is key public policy issue, favors legislative action supporting such a concept.

2. Regarding Wet Weather Permits:

The Subcommittee supports the general direction of the Water Quality Advisory Group to develop a resolution of this dilemma which is supported by the regulated community, the environmental advocate community, and the technical community and, because this is a key public policy issue, favors legislative action supporting such a concept.

3. Regarding Antidegradation of nonBCCs,⁷ sediment quality as a water quality standard, and biological integrity as a water quality standard:

The Subcommittee recommends the same policy on antidegradation, sediment quality and biological integrity it did from the 1998 EQSC surface water policy deliberation. This is because

⁷That is, regarding antidegradation of a sort that is not addressed by the current Indiana antidegradation policy applying to bioaccumulative chemicals of concern that are discharged into waters draining into the Great Lakes.

IDEM continues to include these three concepts in the on-going triennial rulemaking before the Water Pollution Control Board, despite the caution raised by the EQSC last year and in S.B. 343. Each of these issues has federal rulemaking underway to determine the federal government policy. The Subcommittee understands that the Commissioner's Water Quality Advisory Group is planning to consider these issues in the coming months.

(a) antidegradation procedures for nonBCCs

Pending deliberations and advice of the Water Quality Advisory Group, the Subcommittee recommends that IDEM not proceed with rulemaking on antidegradation procedures for nonBCCs.

(b) sediment quality as Indiana water quality standard

Pending deliberations and advice of the Water Quality Advisory Group, the Subcommittee recommends the Water Board not promulgate sediment quality as a water quality standard at this time but that it encourage IDEM to incorporate both into permits and into IDEM water monitoring greater studies of sediment quality. Upon finding impaired sediments, IDEM should then determine the cause or require the discharger⁸ to determine the cause and prevent further contamination.

(c) biological integrity as Indiana water quality standard

The Subcommittee supports and encourages the use of biological integrity as a tool for IDEM to monitor the quality of Indiana waters and, when justified, to include requirements for studies in permits. Pending the deliberations and advice of the Water Quality Advisory Group, the Subcommittee opposes the inclusion of biological integrity itself as an Indiana water quality standard until the U.S. EPA has clarified what is meant in a manner that permits all parties to understand the quality expectation in the same way.

4. Regarding Indiana Surface Water Quality Data Collection:

The Subcommittee recommends that the Governor appoint a Water Quality Data Task Force to assess the physical, chemical, and biological data water resource at IDEM, the quality assurance protocols, the needs for improved data quality, and the options for obtaining and maintaining an adequate data base for standard-setting (e.g. site-specific metal toxicity, site-specific BAF and site-specific use attainability) and for addressing impairment. The task force shall include representatives from academia (including biological, chemical and hydrological), IDEM, IDNR, USGS, private chemical laboratory, business, agriculture, environmental advocate, municipality, general citizen, Water Board member and four legislators.

To these water-related recommendations from Dr. Beranek that had been endorsed by the Land and Water Subcommittee, Senator Gard added an additional proposal, which was initially submitted by John R. Wilkins and was amended at the suggestion of John Kyle, and which had also been endorsed by the Subcommittee:

⁸The words "or require the discharger to determine the cause" were added at the suggestion of Glenn Pratt.

There is a presumption that the Water Pollution Control Board cannot adopt a rule designate a waterbody as an outstanding state resource water (OSRW) or an outstanding natural resource water (ONRW) unless it is demonstrated that the waterbody has outstanding water quality, as determined by recognized biological scoring models and criteria. To overcome this presumptive requirement of outstanding water quality, it must be demonstrated that the waterbody possesses truly unique or special features. In addition, before any waterbody can be designated OSRW or ONRW, the Board must also evaluate the economic impact of the designation and the degree of existing urban and agricultural development.

To this Senator Gard proposed the addition of one more sentence:

Before it disbands, the Water Quality Advisory Group should consider the designation of bodies of water as OSRWs or ONRWs .

The members of the EQSC discussed the Subcommittee-endorsed water recommendations outlined by Senator Gard. William Goffinet, the Mayor of Tell City, expressed strong support for the recommendation concerning wet weather permits. He said he hopes for a solution to the combined sewer overflow problem that everyone will be able to live with.

Senator Gard said she understands that the matter of the antidegradation of nonBCCs will be affected by federal regulations that are currently being developed.

Senator Gard explained that, at the Land and Water Subcommittee meeting of November 19, she invited anyone having views contrary to those expressed in the water-related recommendations endorsed by the Subcommittee to submit their views in writing. IDEM Deputy Commissioner Tim Method had submitted written comments in response to this invitation, and Senator Gard directed staff to distribute copies of Mr. Method's comments to the EQSC and to ensure that Mr. Method's comments are included in the EQSC's final report.⁹

Following the discussion of the water-related recommendations that had been endorsed by the Land and Water Subcommittee, the EQSC, by consent, acted to accept the entire Report of the Land and Water Subcommittee.

Finally, Representative David Wolkins, the Chairman of the **IDEM Administrative Issues Subcommittee**, presented a Subcommittee Status Report on his Subcommittee,¹⁰ which listed the following issues that were assigned to the Subcommittee for study in 1999:

Study different approaches to the allocation of costs of services supported by certain IDEM dedicated funds. [HEA 1578]

Review and make recommendations on permit accountability time frames. [HEA 1919]

Look at IDEM enforcement policy that would provide relief from civil penalties for voluntary disclosure that results from a voluntary internal audit. [HEA 1919]

⁹A copy of Mr. Method's written comments, entitled "Comments of IDEM on Land and Water Subcommittee Report to EQSC," is available from the LIC as attachment E to these minutes.

¹⁰A copy of Representative Wolkins' Status Report is available from the LIC as attachment F to these minutes.

This report indicated that the deadline for the submission of recommendations on the first issue was November 1, 2000; that the consultant studying the second issue is scheduled to report to the EQSC on December 7, the EQSC's final meeting for 1999; and that the EQSC had no deadline for the submission of recommendations on the third issue, but was required only to receive annual reports from IDEM. Representative Wolkins asked that the IDEM Administrative Issues Subcommittee be allowed to continue its work in the year 2000.

IDEM Deputy Commissioner Tim Method pointed out that the first issue assigned to the IDEM Administrative Issues Subcommittee ("Study different approaches to the allocation of costs of services supported by certain IDEM dedicated funds") had implications as to IDEM's budget, and he therefore requested that the Subcommittee's work on that issue be concluded in the year 2000 by April or May.

Senator Gard made a motion to continue the IDEM Administrative Issues Subcommittee to the interim period of the year 2000 and to recommend that the Subcommittee conclude its study of the allocation of costs of services supported by certain IDEM dedicated funds in time to accommodate IDEM's budget-related deadlines. This motion was adopted by consent.

Rep. Wolkins' Status Report on the IDEM Administrative Issues Subcommittee was then also adopted by consent.

Glenn Pratt, with Senator Gard's permission, made a statement advocating a "clean water initiative" bill similar to a bill introduced in the 1999 legislative session and proposing greater attention to the problem of failing septic systems.

Senator Gard declared the meeting adjourned at approximately 12:10.